IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

No. 99

THE UNITED CORPORATION
Petitioner,
v.
SECURITIES AND EXCHANGE COMMISSION
Respondent.

REPLY BRIEF ON BEHALF OF PETITIONER, THE UNITED CORPORATION

The point to be emphasized in this reply is that the Commission has failed to demonstrate any statutory or judicial authority to support its denial of reimbursement to United. Rather, the Commission relies on its expectation of judicial deference to administrative experience.

The Commission's brief asserts that "the Commission has developed on a case-to-case basis the general policy of requiring registered holding companies to pay their own expenses incurred in reorganization of their subsidiary companies" (Brief, pp. 10-11); the Commission's order was a "proper administrative decision" (*id.* at p. 10); the allowance of fees is "one of the large areas of discretion" committed to the Commission's judgment (*id.*); the Commission's conclusion "represented a considered judgment", "a policy determination in an administrative area in which the Congress has given the Commission primary responsi-

bility'' (*id.* at pp. 12-13); prior determinations by the Commission ''have established a pattern of administrative consistency'' (*id.* at p. 14); and the Commission ''applied to the facts of this case a Commission policy developed within its own specialized area of experience and expertise'' (*id.* at p. 15).

Nowhere is the Court told why the determination in United's case should be regarded as a non-reviewable application of administrative policy or how it differs from the Commission's determinations which were reviewed and annulled in *S. E. C.* v. *Cogan,* 201 F. 2d 78, 82 (9th Cir. 1951), and in *In re North American Light & Power Co.,* 101 F. Supp. 931, opinion on rehearing, 106 F. Supp. 686 (D. Del. 1952), *aff'd* 202 F. 2d 638 (3d Cir. 1953), *cert. denied sub nom., S. E. C.,* v. *Masterson,* 346 U. S. 818 (1953). An administrative decision on a question of law does not become a determination of ''Commission policy'', developed in a ''specialized area of experience and expertise'', merely on the Commission's own say-so.

The Commission has never held that the allowance of reimbursement to holding companies for beneficial services performed in the reorganization of their subsidiaries would tend to promote undersirable practices in reorganizations, encourage unnecessary participation, or hinder or obstruct in any way the reorganization, integration or dissolution of holding companies under the Public Utility Holding Company Act of 1935.* No reason is given in the present case for the claim that the denial of reimbursement to United represents ''a policy determination in an administrative area,'' except, it appears to us, the general attitude that a public utility holding company is by definition a tainted organization to be denied relief extended to untainted claimants.

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* Although the Commission's brief notes that Public Service has paid approximately $1,300,000 in fees and expenses, it does not argue that the imposition of an additional $33,000 in expenses would adversely affect the reorganization.

The Commission's disavowal of principles established under the Bankruptcy Act

In its petition, United urged that under principles established in Chapter X reorganization proceedings, by which the Commission in the past has purported to be governed, it was entitled to reimbursement in this case. The Commission now disavows those principles and argues that there is nothing in the Bankruptcy Act or in the Public Utility Holding Company Act "which precludes the Commission from developing and applying additional principles and policies adopted to *the peculiar problems* of holding company reorganizations under the Act." (Emphasis supplied.)

But the Commission undertakes no exposition of "the peculiar problems" which it feels justify its departure in this case from the principles it has hitherto acknowledged.

We submit that this Court's decision in *S. E. C.* v. *Chenery Corp.*, 332 U. S. 194 is not properly cited to support the sort of administrative authoritarianism espoused by the Commission in this case.

The petition for certiorari should in all respects be granted.

Respectfully submitted,

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August 5, 1954.